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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

United States of America,

Plaintiff,

v.

Chris Nero,

Defendant.

NO. CR 08-0744-TUC-CKJ (JCG)

**Government's Response to
 Defendant's Motions Filed on or
 about October 3 and October 4, 2011**

The government, by and through its attorneys, Ann Birmingham Scheel, Acting United States Attorney for the District of Arizona, and Jonathan B. Granoff, Assistant U.S. Attorney, hereby files its response to the defendant's recently filed motions, document numbers 366-381 and 385-386. In support thereof, the following is stated.

Most of the defendant's motions filed with this court on October 3 - 4, 2011 are frivolous and should be denied. In doc. # 366, the defendant challenges the government's request to subpoena his recorded phone calls. The defendant also raises various other issues most of which have already been addressed by this court on September 23, 2011 and October 4, 2011. *See* doc. #'s 361 and #382. Because this court has already addressed these issues, this motion doc. #366, should be denied. To the extent the defendant raises any other issues in this motion, the allegations are frivolous and should also be rejected by this court.

1 In doc. # 367, defendant requests “any evidence that prosecution may possess that
2 states defendant is a 14th amendment citizen be presentea.” *See* doc. # 367. This request is
3 irrelevant to any of the disputed issues concerning restitution and should be rejected.

4 In doc. #368, #369, and #385 the defendant filed a “motion for judicial prejudicial
5 misconduct” and again raises various allegations relating to his motion to withdraw plea
6 agreement. These motions should be denied. Defendant alleges that the court made
7 improper comments during the sentencing hearing. However, the record does not support
8 this claim. To the extent the defendant’s motion (doc.#368) challenges the court’s
9 jurisdiction, this court has previously addressed this issue. *See* doc. #361. To the extent the
10 defendant is raising additional allegations to supplement his previously filed motion to
11 withdraw guilty plea (doc. #359), the defendant’s arguments should be rejected for similar
12 reasons stated in the government’s response filed on September 26, 2011 (doc. #363).

13 In doc.#370, the defendant filed a motion for prosecutorial misconduct. This
14 allegation is without merit and should be rejected. In this motion, the defendant raises
15 similar issues he has previously addressed with the court in doc. #348, “Motion to Court.”
16 The court addresses most of these claims in its order. To the extent the defendant raises any
17 new issues in this motion, his claims should be rejected because they are irrelevant to the
18 restitution hearing.

19 In doc. #371, the defendant requests “for FDIC to present certified charges and
20 certified codes that are bonded.” *See* doc. #371. He further claims that FDIC is a “fiction.”
21 These claims along with any other allegations he raises in this motion are irrelevant to the
22 issue of the restitution hearing and should be denied.

23 In doc. # 372, the defendant appears to request an exception to the rules that ordinarily
24 apply to attorneys in court because the defendant is a *pro se* litigant. This claim should be
25 rejected. Our Appellate Court has provided suggested language to conduct a *Faretta* hearing.
26 *See United States v. Erskine*, 355 F.3d 1161, 1168 (9th Cir. 2004) (*citing*, *United States v.*

1 *Hayes*, 231 F.3d 1132, 1138-1139 (9th Cir. 2000)). This language explicitly instructs
2 potential *pro se* defendants that they must “abide by the same rules in court as lawyers do.”
3 *Id.*

4 In doc. #373, defendant requests that the plea agreement be amended to reflect his
5 “full legal name.” This motion should be denied because it is irrelevant. However, if the
6 defendant’s true legal name is actually Chris M. Nero, than the government has no objection
7 to correcting the caption of this case to the defendant’s true legal name.

8 In doc. #374, the defendant requests that the court independently address each of the
9 defendant’s motions. The government has no objection to this request. However, each of
10 his other motions should be denied.

11 In doc. #375, #376, #380 and #381 the defendant renews his request to challenge the
12 subject matter jurisdiction of this court. He also asserts other baseless and irrelevant
13 allegations in these motions. These motions are without merit and should be denied.
14 Additionally, to the extent the defendant challenges the subject matter jurisdiction of the
15 court, this court has previously addressed this claim. *See* doc. #361.

16 In doc. #377, the defendant filed a “Motion For Legal Counselors Personal Helpers
17 For Defendant.” Reading the body of this motion, it is unclear what the defendant is actually
18 requesting. If the defendant is requesting that the court appoint him unlicensed “legal
19 helpers,” this request should be denied. The defendant has failed to provide any authority
20 for the court to authorize unlicensed “lawyers” to assist the defendant in this case.

21 In doc. #378, the defendant requests that the court appoint the defendant his own
22 independent court reporter for this case. This request should be denied. The defendant has
23 failed to provide any authority for this request. Further, the defendant has not demonstrated
24 that the transcripts relating to these proceedings have been inaccurate.

25 In doc. #379, the defendant claims that the court ordered the government to produce
26 all of its files. This statement is false. *See* doc. # 361. The defendant also alleges that the

1 government has not provided a list of witnesses for the restitution hearing. This claim is also
2 false. The government filed its witness list on September 12, 2011. A copy of this document
3 was provided to the defendant.

4 In doc. # 386, the defendant requests to subpoena various witnesses for the restitution
5 hearing. The defendant states that these witnesses "are needed for defendant to prove the
6 facts for his defense." The defendant has not stated for what purpose he intends to elicit the
7 testimony of these witnesses for the restitution hearing. If the defendant intends to subpoena
8 these witnesses to address the merits of the underlying mortgage fraud, such testimony would
9 not be relevant to the issue of restitution.¹ The defendant should provide a proffer of the
10 expected testimony of these witnesses relating to the disputed issue that concerns the amount
11 of restitution to be determined by the court.

12 Respectfully submitted this 12th day of October, 2011.

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14 ANN BIRMINGHAM SCHEEL
15 Acting United States Attorney
District of Arizona

16 *s/Jonathan B. Granoff*

17 Jonathan B. Granoff
18 Assistant U.S. Attorney
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23 ¹ The defendant indicates that he desires to subpoena Lance
24 Dickson. Lance Dickson reimbursed Nova for some its losses
25 relating to this case. The government brings this to the court's
26 attention to the extent such information would be considered
relevant to the disputed amounts of restitution relating to Nova.

1 A copy of the foregoing has been served electronically or by other
2 means this 12th day of October, 2011, to:

3 Chris Nero, at F.C.I., Tucson.
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